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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/751,310	01/02/2004	Gerhard Lengeling	P3252US1 (60108-0097)	8798

46258 7590 09/18/2007  
HICKMAN PALERMO TROUNG & BECKER LLP  
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2055 GATEWAY PLACE  
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SAN JOSE, CA 95110-1089

EXAMINER
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WARREN, DAVID S

ART UNIT	PAPER NUMBER
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2837

MAIL DATE	DELIVERY MODE
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09/18/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

Application No.

10/751,310

Applicant(s)

LENGELING ET AL.

Examiner

David S. Warren

Art Unit

2837

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 12 June 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1,2,6-22,24-26 and 28 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,2,6-22,24-26 and 28 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 02 January 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 101***

1. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 1, 2, 6 – 21, and 29 – 36 are rejected under 35 U.S.C. 101 because the claimed invention lacks patentable utility. Independent claims 1 and 13 recite only “obtaining a set of...data” and to “obtain a set of...data.” Merely obtaining data (without a tangible result) is not deemed to be a useful process, machine, manufacture, or composition of matter as is required by statute. The Examiner suggests adding a limitation similar to claim 22, i.e., in response to a manipulation request, performing manipulation and processing sound for a given instrument.

### ***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims s 22, 24 – 26 and 28 are rejected under 35 U.S.C. 102(b) as being anticipated by ACID <sup>TM</sup> (ACID User Manual, Sonic Foundry, Europe. 1999; hereinafter “ACID”). Regarding claims 22 and 25, ACID discloses the use of obtaining an audio

manipulation request, i.e., to allow a user to vary (or manipulate) audio data (e.g., volume, pan, effects; page 54), determining whether the audio file contains synthesis treatment data (e.g., envelope data, page 54), and in response to a manipulation request to alter the audio file (or process the sound of a specific instrument). The ACID product allows users to manipulate audio loops (including tempo, volume, etc.). The ACID format files contain data (treatment data) such as envelope, tempo, etc. Regarding claims 26 and 28, ACID discloses the use of sample data associated with an audio waveform (all \*.wav, \*.acd, and \*.aif files are sampled data files of an audio waveform), and data that sets forth specific synthesis treatment to be used for processing a given sound (e.g., the envelope data on page 54 is deemed to be data that sets forth a specific synthesis treatment for processing the sound). Regarding claim <sup>24</sup>28, the set of audio playback parameters are deemed to be pan and FX (pg. 54).

### ***Response to Arguments***

3. Applicant's arguments filed June 12, 2007 have been fully considered but they are not persuasive. The Applicant argues that ACID "editing with envelopes affects *all* of the sounds within the track of the music, not just the sound of a given instrument." The Examiner does not concur. ACID allows editing of a single event (page 54), perhaps the Applicant was referring to Master fader control. Furthermore, many of ACIDs samples are of a single instrument (e.g., drum loops), therefore, the manipulation would not only specify the instrument but also the event. Regarding claims 22, 24 – 26, and

28, the Applicant argues that ACID does not disclose a single file containing sample data, synthesis treatment data, and specifying an instrument. As stated by the Applicant, the project files of ACID “contain all information about a single project” [Emphasis added]. While the ACID project file may contain other files, the project file is still a file. The Applicant is reminded that the Examiner interprets claim language in the broadest reasonable sense. Therefore, the use of the terms “obtain,” “determining” and “specifies” may be interpreted differently by the Examiner than the Applicant.

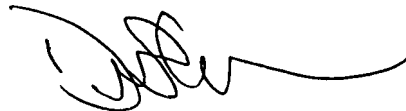
### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David S. Warren whose telephone number is 571-272-2076. The examiner can normally be reached on M-F, 9:30 A.M. to 6:30 P.M..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lincoln Donovan can be reached on 571-272-2837. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Dsw



DAVID S. WARREN